

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:19-cv-249-FL**

MATTHEW BRADLEY,

Plaintiff,

v.

ANALYTICAL GRAMMAR, INC.,

Defendant.

**ANALYTICAL GRAMMAR, INC.’S
MOTION FOR DISMISSAL OF ITS
FIRST COUNTERCLAIM AND FOR
ENTRY OF FINAL JUDGMENT**

Pursuant to Rules 41(a)(2) and 41(c) of the Federal Rules of Civil Procedure, Defendant Analytical Grammar, Inc. (“Analytical”) respectfully requests that the Court dismiss, without prejudice, its first counterclaim seeking a declaratory judgment of invalidity of copyright, and then enter final judgment in favor of Analytical on all other claims and counterclaims.

Plaintiff Matthew Bradley (“Bradley”) raised claims of copyright infringement and removal of copyright management information (“CMI”). DE 1. Analytical brought three counterclaims for a declaratory judgment that: (1) Bradley’s copyright registrations are invalid; (2) Analytical did not infringe the copyright; and (3) Analytical did not remove CMI. DE 12 pp. 14-17. Analytical moved for summary judgment on both of Bradley’s claims and on its second and third counterclaims. DE 26. Bradley moved for summary judgment on his infringement claim and for summary dismissal of Analytical’s first and second counterclaims. DE 35. The Court found that Analytical “did not infringe upon any copyright” and “that there is no basis in the record to conclude that [Analytical] removed CMI.” DE 63 pp. 1-2. Accordingly, the Court granted Analytical’s motion, denied Bradley’s motion, and entered judgment. *Id.*, DE 64.

“A finding of noninfringement does not moot a counterclaim for invalidity.” *Ultimate Home Protector Pans, Inc. v. Camco Mfg., Inc.*, No. 1:19-CV-280, 2020 U.S. Dist. LEXIS

153058, *13-14 (M.D.N.C. Aug. 24, 2020) (patent case) (citations omitted). Having made such a finding, the Court has discretion to dismiss the counterclaim without prejudice. *Id.* The summary judgment order leaves no need to reach the first counterclaim, but Analytical cannot voluntarily dismiss it because Bradley answered the counterclaims. Fed. R. Civ. P. 41(c)(1); DE 15. Finality requires an order of the Court, and “the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities.” Fed. R. Civ. P. 54(b); Fed. R. Civ. P. 41(a)(1)(A)-(B).

Therefore, Analytical respectfully requests that the Court enter an order dismissing the first counterclaim without prejudice, and reenter judgment in favor of Analytical on both of Bradley’s claims and on Analytical’s corresponding second and third counterclaims.

Dated: March 9, 2021

Respectfully submitted,

Analytical Grammar, Inc.

By its attorneys:

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Local Civil Rule 83.1(e) Special Appearance

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CERTIFICATE OF SERVICE

I, Dan Booth, hereby certify that on March 9, 2021, a true copy of the foregoing Analytical Grammar, Inc.'s Motion for Dismissal of Its First Counterclaim and for Entry of Final Judgment was electronically filed using the Court's CM/ECF system, which will send notification of such filing to the following counsel of record for Plaintiff Matthew Bradley:

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March 9, 2021

/s/ Dan Booth
Dan G. Booth